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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,332	09/04/2003	Hank Gevedon	946-001	6091

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STOCKWELL & ASSOCIATES, PSC
861 CORPORATE DRIVE, SUITE 201
LEXINGTON, KY 40503

EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/655,332

Applicant(s)

GEVEDON, HANK

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-45, drawn to a system for practicing fishing casts, classified in class 434, subclass 247.
 - II. Claims 46-49, drawn to a mechanical practice fish, classified in class 43, subclass 26.1.
 - III. Claims 50-51, drawn to a method for using a practice fish, classified in class 434, subclass 258.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention II claims a chassis while invention I does not. The subcombination has separate utility such as a toy for children or as a fishing lure.
3. Inventions I, II and III are related as product (I, II) and process (III) of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that

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product (MPEP § 806.05(h)). In the instant case the products of inventions I and II can be used as toys for children to play with.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. This application contains claims directed to the following patentably distinct species of the claimed invention. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear generic:

1. The embodiment, as viewed in Figure 6 and 25, wherein the device utilizes an active mode.

2. The embodiment, as viewed in Figure 7, 23 and 24, wherein the device utilizes a passive mode.

6. Upon election of species 1 or 2, applicant is further required under 35 U.S.C. 121 to elect from the following species for prosecution on the merits:

A. The embodiment, as viewed in Figures 16 and 17, wherein the lure used is a reflective lure.

B. The embodiment, as viewed in Figures 18, 19 and 26, wherein the lure is an IR lure.

7. Upon election of species A or B, applicant is further required under 35 U.S.C. 121 to elect from the following species for prosecution on the merits:

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a. The embodiment, as viewed in Figures 14A and 14B, wherein the fish is in the shape of a bone fish.

b. The embodiment as viewed in Figures 15A and 15B, wherein the fish is in the shape of a bass fish.

8. Upon election of species a or b, applicant is further required under 35 U.S.C. 121 to elect from the following species for prosecution on the merits:

i. The embodiment, as viewed in Figures 9 and 10, wherein the device functions based on an automated or programmed mode.

ii. The embodiment, as viewed in Figure 8, wherein the device functions based on a manual mode, and is controlled via a remote control device.

9. Upon election of species i or ii, applicant is further required under 35 U.S.C. 121 to elect from the following species for prosecution on the merits:

AA. The embodiment of claim 31, wherein the plurality of logic gates are designed to restrict detection to pulses of infrared light received at a particular frequency.

BB. The embodiment of claim 32, wherein the plurality of digital logic gates restrict detection to pulses of infrared light at or above a threshold amplitude.

10. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement (e.g. I, 1, A, a, i, AA) and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

11. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA


MICHAEL J. GARNEAU
SUPERVISORY PATENT EXAMINER